

ORIGINAL

#71934

**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF TEXAS**

CALVIN CARRICK,

Plaintiff, Pro Se,

v.

Civil Action No:

3-14CV0372-D

COMMUNICATIONS WORKERS of AMERICA, AFL-CIO;

AT&T INC.,

Defendants.

**CIVIL COMPLAINT
and JURY DEMAND**

**CALVIN CARRICK
Plaintiff, pro se
1909 Johnson St.
Little Rock, AR 72204
(501) 307-3500
30 January 2014**

DEPUTY CLERK

NY

2014 JAN 30 PM 4:16

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

I, Calvin Carrick, Plaintiff, pro se, complain of Defendants and state:

INTRODUCTION – NATURE OF THE ACTION

1. The Congress of the United States has declared in the National Labor Relations Act, that labor unions and employers shall be obligated to bargain collectively and in good faith, the terms and conditions of employment, negotiations of any agreement, and any question arising there under. [29 U.S.C. §158(d)]

2. ***“Good faith bargaining necessarily requires that claims made by either bargainer should be honest claims.” ““Good faith” means more than merely going through the motions of negotiating...”***
Labor Board v. Truitt Mfg. Co., 351 U.S. 149, 152, 154 (1956)

3. Plaintiff contends that both Defendants failed their mutual obligation to negotiate in good faith at grievance meetings relative to the termination of Plaintiff's employment.

4. This case arises out of AT&T's (the Company) experimentation and development of a computer-based employee bean counting scheme known as MSOC (Management Systems Operating Control). In 2008, this MSOC system was used to provide false performance marks in Plaintiff's evaluations. Plaintiff contends that the evidence will show that management at AT&T, knew or reasonably should have known, the MSOC system was not an accurate measure of employee performance as the Company advertised.

5. Plaintiff was terminated in February 2009 and encouraged at that time by a Communication Workers of America (the Union) rep to file a grievance, and did so the same month. Apparently, with no better explanation to date, the local Union lost track of the grievance, suggesting the loss was due to the local Union President being deployed on military duty.

6. The Union, seemingly, rediscovers the grievance nearly a year later in January 2010 and assigns a Union officer (who was never absent nor deployed) on 19 January 2010 to investigate and set up grievance meetings. But the Union officer hurriedly set up meetings before interviewing the grievant (the Plaintiff in this case) or conducting an investigation of the allegations of the grievance.

7. The Union then proceeded to grievance meetings with the Company, and with no investigation and no ammunition, was predictably denied by the Company. Plaintiff contends the actions of the Union, throughout the entire Union chain of command, with respect to grievance were simply inexplicable. Perhaps because the Plaintiff was not a member of the Union.

8. Therefore, Plaintiff sues Defendant AT&T for making dishonest claims relative to MSOC bean counting scheme at grievance

meetings. And Plaintiff sues Defendant Communication Workers of America for failing to negotiate in good faith by “...*merely going through the motions of negotiating...*” at grievance meetings. Defendants have violated the National Labor Relation Act, 29 U.S.C. § 157-158, and Plaintiff seeks compensatory and punitive damages.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. §1331, and because the action arises under federal statutes, 29 U.S.C. §157-158.

10. Venue is proper in this Court pursuant to 28 U.S.C. §1391, in that events giving rise to Plaintiff’s claims occurred within this district, where Plaintiff and Defendants resided at all relevant times.

THE PARTIES

11. **Plaintiff Calvin Carrick** is a citizen and resident of the United States, currently domiciled in Pulaski County, Arkansas.

12. **Defendant Communication Workers of America** is headquartered in Washington, D.C. and engages in Union activities in Dallas, Texas under the jurisdiction of this Court pursuant to 29 U.S.C. §185(c)(2).

13. **Defendant AT&T, Inc.** is, and at all relevant times, a corporation organized under the laws of the State of Texas with its headquarters and principal place of business in Dallas, Texas. AT&T Inc. is a regulated business pursuant to the rules of the Federal Communications Commission, engages in interstate commerce or engages in the delivery of goods and services for commerce.

FACTUAL ALLEGATIONS

14. Plaintiff started working for Southwestern Bell (SBC) in March 2000 in Little Rock, Arkansas. In 2003, SBC moved Plaintiff's work center to Richardson, Texas. In 2005 SBC and AT&T merged into the current AT&T, Inc. Plaintiff's employment was terminated in February 2009.

15. The record shows, Plaintiff had no so-called job or work related performance problems what so ever until the 2006 year's evaluation. In fact, the previous year's evaluation, 2005, shows Plaintiff received the highest overall rating, and was described by managers as a "go-to person in this crew".

16. Plaintiff recalls that between 2005-2006, as SBC merged with AT&T, and then AT&T merged with Bell South, the Company's workers had a sense of worry and dread, rather than jubilation about prospects of re-

organization, re-shuffling and job cuts as the 'Baby Bells' realigned. This period of major change proved to be a corporate bean counter's dream.

18. Amongst the swell of ideas coming from management during this time of change, with managers wrangling for positions and importance, came this notion of computerizing employee work functions and evaluations. Two examples, of these initially experimental projects, were called "Tech-Score" and then the later project "MSOC".

19. The record shows that Plaintiff's 2006 year's evaluation, which was presented to Plaintiff on 28 March 2007, contained erroneous job performance data from the Tech-Score bean counting system. It was widely known and discussed that the roll out of this bean scheme was a fiasco that the Company would not admit.

20. With such erroneous performance data now appearing as fact on employee evaluations, the records shows, Plaintiff made a written request on 29 March 2007, for the Tech-Score formulation or program producing such false data. After repeated verbal and written requests, Plaintiff received no useful information or response from the Company until nearly a year later, in February 2008.

21. The Company never provided complete information of the Tech-Score formulation. However, the Plaintiff undeterred, conducted a

painstakingly detailed maintenance log audit of the Tech-Score system's output data for the 2007 year's evaluation period, and found the bean counting scheme program to be 73% inaccurate. That is, of the data fields in question, the Tech-Score program made miss judgments in more than 2 out of 3 outputs. Yet the Company utilized this grossly false data as fact.

22. Plaintiff confirmed findings to management, but the Company took no action, presumably because the Tech-Score system was being discontinued and replaced by MSOC. However, the problem remains with 2006 and 2007 employee evaluations containing false job performance marks from the Tech-Score bean scheme.

23. For 2008 the Company rolled out, the presumably new and improved, MSOC bean system. It was immediately clear that MSOC contained many of the same fundamental flaws as its predecessor.

24. The record and other evidence shows the Plaintiff, perhaps more than any other center employee, had made specific requests which called in to question the results of the bean counting scheme. The Company engaged in a retaliation campaign against Plaintiff by filling Plaintiff's personnel file with false job performance data, and Plaintiff was terminated on 2 February 2009, before receiving the 2008 performance evaluation which the Company knew Plaintiff would have thoroughly audited.

25. Plaintiff filed a union grievance on 23 February 2009, and assumed Union would handle appropriately. Plaintiff was patiently awaiting contact from the Union, and considered that perhaps the ongoing contract negotiations between the Union and Company might have delayed processing of the grievance.

26. But after contract talks should have long ended and the holidays long passed, there was still no contact from the Union. Plaintiff emailed Union on 20 January 2010, only to find out that the Union had apparently lost track of the grievance. The Union suggested the loss was due to the local president being deployed on military duty.

27. The evidence shows the Union had lost track of grievance long ago, and had conducted no interview with grievant, collected no witness statements, gathered no data relative to allegations in grievance, made no records, and essentially did no investigation at all, or in any manner consistent with the normal grievance processes of unions nationwide.

28. And once grievance was rediscovered, instead of admitting the mistake, the Union set out to spin a cover-up by hastily setting up grievance meetings, which predictively, could do nothing but fail. The Union had fair opportunity to correct their handling of the grievance, but rather chose to circumvent responsibility by orchestrating a cover-up.

CLAIM FOR RELIEF

28. Plaintiff alleges and incorporates by reference the preceding paragraphs of this complaint as if fully alleged herein.

29. Defendant AT&T, Inc. and Defendant Communications Workers of America knowingly and willfully violated the National Labor Relations Act, 29 U.S.C. §157 and §158(d) by failing to confer in good faith.

30. In that, AT&T Inc. knowingly, made dishonest claims at grievance meetings by presenting false job performance evaluations marks. And that the Union, willfully, intentionally and repeatedly disregarded its to responsibility to reasonably process the grievance in good faith, and merely went through the motions of doing so.

31. As a direct result of Defendant's violations of the National Labor Relations Act, Plaintiff has suffered loss wages and benefits, and is accordingly entitled to recover damages in amounts to be determined by the jury at trial.

JURY TRIAL DEMAND

32. Pursuant to Rule 38 of the Federal rule of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint.

PRAYER FOR REIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court find that Defendants willfully and knowingly violated the National Labor Relations Act, 29 U.S.C. §158(d).
- B. That the Court finds that as a result of Defendants unlawful acts, Plaintiff was terminated without just cause and should be reinstated.
- C. That the Court award to Plaintiff compensatory and punitive damages as determined by jury at trial, as well as all other just and proper relief this Court may deem appropriate.

Respectfully submitted,

Dated: **January 30, 2014**


CALVIN CARRICK, Plaintiff, pro se
1909 Johnson St., Little Rock, AR 72204
(501) 307-3500
cal.mkiii@yahoo.com

CERTIFICATE OF SERVICE

I, CALVIN CARRICK, do hereby certify that a true copy of the foregoing was hand delivered to the following, this **January 30, 2014**:

CWA
c/o CWA – District 6
Woodview Tower, Suite 610
1349 Empire Central
Dallas, Texas 75247

AT&T
208 Akard St.
Dallas, Texas 75202


CALVIN CARRICK

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CALVIN R. CARRICK, PLAINTIFF, PRO SE

DEFENDANTSCOMMUNICATION WORKERS of AMERICA;
AT&T, INC.

(b) County of Residence of First Listed Plaintiff

PULASKI, AR

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

DALLAS, TX

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

PLAINTIFF, PRO SE 1909 JOHNSON ST.
LITTLE ROCK, AR 72204
(501) 307 3500

Attorneys (If Known)

3-14CV0372-P**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 158(d) - NATIONAL LABOR RELATIONS ACT

Brief description of cause:

DEFENDANTS FAILED TO NEGOTIATE IN GOOD FAITH.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/30/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE